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July 22, 2019

Robert N. Barley, Chairman  
c/o Douglas L. Eberly, Esq.  
Pennsylvania Milk Marketing Board  
Room 110, Agriculture Bldg.  
2301 North Cameron Street  
Harrisburg, PA 17110

RE: PADC's Request Pertaining to Scheduling of the Cooperative  
Milk Procurement Cost Hearing

Dear Chairman Barley and Members of the Board:

On June 11, 2019, in response to a request from the Pennsylvania Association of Dairy Cooperatives ("PADC") the Pennsylvania Association of Milk Dealers ("PAMD") informed the Board that it could not be ready for the Procurement Hearing in the early Fall of this year. Among other reasons, PAMD explained that one of PAMD's principal expert witnesses would not be available. This is due to a mandatory sabbatical pursuant to Herbein & Co policy. In addition, PAMD's professionals were already facing numerous competing deadlines and obligations and did not believe it was feasible to adequately represent PAMD's interests on a Fall timeline. On June 12, 2019, the Board indicated it too understood that the Fall schedule was already very busy and although the Board indicated it would see if it could fit the hearing in sooner than planned, the interested parties did not anticipate that the hearing would be placed ahead of another hearing scheduled for October, which would be during anticipated pre-submission deadlines for three of the six upcoming cost replacement hearings.

Herbein & Co and the undersigned counsel have many professional commitments including preparations for the upcoming Price Hearing Workshop, where the questions being raised have required significant analysis, the Over Order Premium Hearing, and Six Cost Replacement Hearings. Unfortunately, taking the In-Store Handling Hearing off the October schedule does not alleviate our load because that hearing was not going to require, for PAMD, the preparation levels that the Procurement Hearing will require. In most instances, each hearing requires hours, days and in many cases weeks of work that is unseen by the PMMB.

PAMD requests that the hearing be held sometime in early 2020 as originally contemplated. That may even allow for the Board to hold a conference among the parties to

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narrow the issues and explore the possibility of a compromise to the extent feasible under the Milk Marketing Law. PAMD is willing to explore those concepts. We believe such a conference would be authorized pursuant to 1 Pa. Code 35.112 which authorizes "prehearing or other conferences ... to expedite the orderly conduct and disposition of a hearing" which may address "offers of settlement or proposals of adjustment" among other things. See also 1 Pa. Code 35.111 and 1 Pa. Code 35.113.

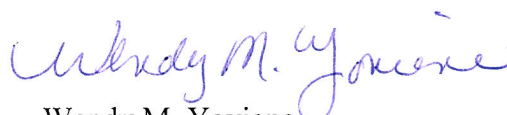
If the Board does not move the hearing, PAMD strongly urges the Board to extend the deadlines for rebuttal and surrebuttal pre-submissions to at least August 30, 2019 and September 25, 2019, respectively. Given pre-existing commitments, PAMD simply cannot prepare a new expert to the Procurement Hearing, without the presence or support from Dave Stonesifer, for pre-submissions due August 16. Without an extension of time at a minimum, PAMD will be unable to adequately address the issues of concern at the hearing. The issues may appear simple to the Board, but the implications for many different plants require analysis and require a great deal of contemplation both by our membership and our hearing witnesses.

I have shared this request with counsel for the interested parties and Board Staff and the Pennsylvania Association of Food Merchants have no opposition to PAMD's requests. PADC is (1) opposed to moving the hearing to 2020; (2) not opposed to moving the surrebuttal and rebuttal pre-submissions; and (3) opposed to a conference at this point in the proceeding. I have not received feedback from the Farm Bureau or the Department of Agriculture as of now.

Thank you for your consideration of these requests.

Respectfully submitted,

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, PC

  
Wendy M. Yoviene